

## **Item LEG05-01 Response Form**

**Title:** Summons: Clerk to Keep Original (Code Civ. Proc., §§ 412.10, 417.30, 583.210, and 1010.6)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

**DEADLINE FOR COMMENT: 5:00 p.m. Friday, June 20, 2005**

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (LEG05-01)

Title	Summons: Clerk to Keep Original (Code Civ. Proc., §§ 412.10, 417.30, 583.210, and 1010.6)
Summary	The proposal would amend Code of Civil Procedure sections 412.10, 417.30, 583.210, and 1010.6 to require the court clerk to keep all original summonses in the court records.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, <a href="mailto:cara.vonk@jud.ca.gov">cara.vonk@jud.ca.gov</a>
Discussion	<p><u>Issue Statement</u></p> <p>Requirements that the clerk issue an original summons that must be returned to the court after a copy has been served on each defendant complicate case processing and unnecessarily increase costs for parties and the courts. Summonses get lost, requiring parties to file a declaration of a lost summons; clerks must reject requests for entry of default because a summons was not returned; and clerks cannot tell if an eviction is based on a 5-day or 30-day summons because they do not have the summons in the file. In family law there is already a rule of court that requires the clerk to keep the original summons in the court file, and it is working well.</p> <p><u>Rationale for Recommendation</u></p> <p>The proposal to amend Code of Civil Procedure sections 412.10, 417.30, 583.210, and 1010.6 was submitted by several superior court clerks as an efficiency and cost-saving measure for litigants and the courts.</p> <p>Service of summons on a defendant notifies the defendant that he or she is involved in a judicial proceeding, and certain minimum contacts with the state give the court jurisdiction over the person sufficient to satisfy due process requirements. (<i>Burnham v. Superior Court, County of Marin</i> (1990) 495 U.S. 604.)</p> <p>After a party fills in a blank summons and pays fees, the clerk “issues” the summons by signing and stamping it, and returning it to the party. Copies, one for each defendant to be served, are “conformed” to show the clerk’s signature and the date the original was issued. (See Code Civ. Proc., § 412.10.)</p> <p>An original summons is not necessary for service, because the statutory provisions governing service provide that service is accomplished by</p>

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delivering a *copy* of the summons that was issued by the court. (See Code Civ. Proc., § 415.10 et seq.) The original summons does not have to be shown to the defendant and it does not have to be in the server's possession. In *Torgersen v. Smith* (1979) 98 Cal.App.3d 948, the court upheld service of a copy where the original summons had inadvertently been returned to the court before service. (See also Weil & Brown Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶ 4:190, p. 4-28.)

If an original summons is lost after service, a declaration of the person who served a copy of the summons must be returned, which has the same effect as if the original summons were returned. (Code Civ. Proc., § 417.30.) The summons and complaint must be served within three years after an action is filed, and the original summons must be returned to the court within 60 days thereafter. (Code Civ. Proc., § 583.210.) Under trial court delay reduction rules, however, a complaint must be served within 60 days after it is filed (Cal. Rules of Court, rule 201.7(b)), but a summons does not have to be returned to the court for three years and 60 days.

Superior court clerks have noted that the benefits of keeping the original summons in the court file under this proposal would eliminate lost summonses and simplify the filing process by: (a) eliminating the need for a declaration of lost summons; (b) eliminating the rejection of requests for entry of default because a summons has not been returned; and (c) ensuring that clerks can determine if an eviction is based on a 5-day or 30-day summons. Clerks handling family law cases report that retaining the summons in the file under rule 5.110 of the California Rules of Court, effective since January 1, 2001, is working well.

It is not necessary to give the original summons to the plaintiff because the statutes call for service of a copy. The code already authorizes issuance of facsimile electronic copies of a summons. (Code Civ. Proc., § 1010.6.) And in at least one court, images of papers in the court file, including a returned summons, can be viewed online via the Internet. (Limited Civil Cases, Central District Superior Court of Los Angeles County.) Keeping the summons in the court file would allow processing of proofs of service and processing of defaults to be handled more effectively and efficiently. The proposal provides that the clerk will keep the original summons in the "court records" to accommodate record-keeping in electronic form.

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The Judicial Council Civil and Small Claims Advisory Committee, the joint legislative subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees, and the Court Technology Advisory Committee have endorsed the proposal.

### Alternative Actions Considered

The committee did not consider alternative actions. Although the statutes could be left unchanged, the proposal would promote greater efficiency for courts and convenience for parties filing actions.

### Implementation Requirements and Costs

Judicial Council form 982(a)(12), *Declaration of Lost Summons After Service* could be repealed. The California Courts Online Self-Help Center would be updated to conform to the revised legislation if enacted. Other publications, including those of commercial publishers, would be updated. The anticipated overall savings for courts and the public should offset these minor implementation costs.

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Attachments

Code of Civil Procedure sections 412.10, 417.30, 583.210, and 1010.6 would be amended to read:

1   **§ 412.10. Clerk Issues for Plaintiff Against Any Defendant**

2  
3   After payment of all applicable fees, the plaintiff may have the clerk issue one or  
4   more summons for any defendant. The clerk will keep each original summons issued  
5   in the court records and must provide a copy of each summons issued to the plaintiff  
6   who requested the issuance of the summons.  
7  
8

9   **§ 417.30. Return of Summons After Service**

10  
11   (a) After a summons has been served on a person, ~~the summons must be returned~~  
12   ~~together with~~ proof of service of the summons as provided in Section 417.10 or  
13   417.20 must be filed, unless the defendant has previously made a general  
14   appearance.  
15

16   (b) ~~If a summons is lost after service has been made but before it is returned, an~~  
17   ~~affidavit of the person who made the service showing the time, place, and~~  
18   ~~manner of service and facts showing that such service was made in accordance~~  
19   ~~with this chapter may be returned with the same effect as if the summons itself~~  
20   ~~were returned.~~  
21  
22

23   **§ 583.210. Time Limit for Service Upon Defendant**

24  
25   (a) \*\*\*  
26

27   (b) ~~Return of summons or other~~ Proof of service of the summons shall must  
28   ~~be made~~ be filed within 60 days after the time the summons and complaint  
29   must be served upon a defendant.  
30  
31

32   **§ 1010.6. Adoption of Local Rules Permitting Electronic Filing and Service**

33  
34   (a)(1)–(4) \*\*\*  
35

36   (5) Upon electronic filing of a complaint, petition, or other document that  
37   must be served with a summons, a trial court ~~may electronically transmit~~  
38   upon the request of the party filing the action will issue a summons with  
39   the court seal and the case number ~~to the party filing the complaint. The~~

1            court will keep the summons in its records and may electronically transmit  
2            a copy of the summons to the requesting party. Personal service of a  
3            printed form of the electronic summons shall have the same legal effect as  
4            personal service of an original summons. If a trial court plans to  
5            electronically transmit a summons to the party filing a complaint, the court  
6            shall immediately upon receipt of the complaint notify the attorney or  
7            party that a summons will be electronically transmitted to the electronic  
8            address given by the person filing the complaint.

9  
10        (6)–(8) \*\*\*

11  
12        (b) \*\*\*